

NOTICE OF EFFECTIVE DATE OF REGULATION REPEAL

California Code of Regulations Title 2, Administration Division 1, Administrative Personnel

DATE: June 26, 2002

TO: ALL STATE AGENCIES, EMPLOYEE ORGANIZATIONS, AND
MEMBERS OF THE GOVERNOR'S CABINET

SUBJECT: REPEAL OF SPB RULE 548.96, **TRANSFER OF EMPLOYEE FROM
GENERAL CIVIL SERVICE TO A CAREER EXECUTIVE ASSIGNMENT**

The purpose of this memorandum is to inform you that California Code of Regulations (CCR) § 548.96 was repealed effective June 20, 2002. The text of the repealed regulation, as approved by the five-member State Personnel Board (Board), is attached in strikeout format. This regulation will be removed from the CCR, Title 2, Division 1.

BACKGROUND:

In Professional Engineers in California Government v. State Personnel Board (2001) 91 Cal. App. 4th 341 [PECG], the Court of Appeal, Third District, issued a published decision holding that, while transfers from one CEA position to another are valid, transfers from a non-CEA position into a CEA position are not valid, and all appointments must be made by competitive examination. As the court explained:

"The general transfer authority provided by section 19050.4 does not authorize a regulation dispensing with competitive examinations for non-CEA employees moving into CEA positions because of the distinct character of the latter... Instead, as stated, we construe the more specific statute, section 19889.3, to require competitive examinations...Accordingly, the regulation (Cal. Code Regs., tit. 2, § 548.96) as construed by the Department to eliminate the need for examinations before transferring a non-CEA into a CEA position, exceeds statutory authority. (See Caldo Oil Co. v. State Water Resources Control Bd. (1996) 44 Cal. App. 4th 1821, 1827.)"

The repeal of this rule will have a negligible impact on departments. Departments will continue to fill CEA positions by competitive examination, as described in CCR § 548.40.

Therefore, in order to comply with the court's decision in PECG, it was necessary to repeal existing SPB regulation § 548.96.

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CONTACT PERSON:

Please direct inquiries regarding this action or regarding the regulatory process in conjunction with this regulation to Steve Unger at the State Personnel Board, P.O. Box 944201, Sacramento, CA 94244-2010, (916) 651-8461 or TDD (916) 653-1498.

Mike Willihnganz
Chief, Policy Division

Attachment: Text of Repealed Regulation

For this repeal, text deleted from the regulation is indicated by strikethrough.

Regulation Governing Career Executive Assignment (CEA) Transfers

Title 2. ADMINISTRATION

Division 1. Administrative Personnel

Chapter 1. State Personnel Board

Subchapter 2. Career Executive Assignment Rules

Article 9. Transfer

~~§ 548.96. Transfer of Employee From General Civil Service to a Career Executive Assignment.~~

~~With the approval of the executive officer, and the concurrence of the affected employee, an appointing power may transfer an employee who has permanent status in a position in the general civil service in the class from which transfer will occur to a position in the career executive assignment category which is at substantially the same level of salary as the general civil service class. Such transfer may, with the written approval of all parties, be made between appointing powers.~~

~~NOTE: Authority cited: Section 18701, Government Code.~~

~~Reference: Sections 18546, 18547, 19889, 19889.2 and 19889.3, Government Code.~~